

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1167

COMMONWEALTH

vs.

SHANE P. CARNEY.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

In 1993, the defendant pleaded guilty to seven indictments, including two indictments charging assault and battery by means of a dangerous weapon (motor vehicle) (ABDW). The plea was based upon the facts recited by the prosecutor at the colloquy, including that the defendant, while driving a stolen vehicle, had engaged in a high-speed chase through Lowell, driving as much as sixty miles per hour over the speed limit through residential and business areas in an effort to evade the police. The defendant drove into oncoming traffic, onto sidewalks, and through an intersection. At another intersection, where two Lowell police officers were stopped in a cruiser, the defendant "drove broadside" into the cruiser, "causing the driver side window to shatter [and] causing injuries to both officers."

"The [stolen] car then backed up and [the defendant] continued to flee."

In 2009, and again in 2016, the defendant moved to withdraw his pleas on the ground that they were not knowing and intelligent. Both motions were denied by Superior Court judges who were not the plea judge. The defendant took no appeal from the order denying the first motion. His appeal from the order denying the second motion was voluntarily withdrawn. In 2017, the defendant pursued a writ of habeas corpus for release from serving a Federal prison sentence which had been enhanced due to his State convictions. On October 3, 2017, he filed the instant motion to withdraw his pleas of guilty of ABDW on the ground that there was an insufficient factual basis for those charges. Specifically, the defendant argued that the prosecutor's recitation at the plea colloquy did not establish that he acted intentionally or that the officers suffered "physical injury" when he hit their cruiser. Commonwealth v. Porro, 458 Mass. 526, 529 (2010). After a hearing, a third Superior Court judge (motion judge) denied the motion by margin endorsement. She considered the defendant's most recent claim of error to be waived and concluded that, even if it was not, it would fail "because there is a basis in the record from which the plea judge could reasonably have inferred that the police officers who were in the cruiser the defendant broadsided suffered

injuries that interfered with their health or comfort." See Commonwealth v. Jenner, 24 Mass. App. Ct. 763, 773 (1987). We affirm.

Discussion. A motion to withdraw a guilty plea is treated as a motion for a new trial pursuant to Mass. R. Crim. P. 30 (b), as appearing in 435 Mass. 1501 (2001), under which "relief is limited to cases where 'it appears that justice may not have been done.'" Commonwealth v. Lopez, 426 Mass. 657, 662 (1998), quoting Commonwealth v. Fanelli, 412 Mass. 497, 504 (1992). "A motion for a new trial is thus committed to the sound discretion of the judge." Commonwealth v. Scott, 467 Mass. 336, 344 (2014). We review the denial of a motion to withdraw a guilty plea only for a significant error of law or other abuse of discretion, Commonwealth v. Lastowski, 478 Mass. 572, 575 (2018), bearing in mind that judges are to apply the rule 30 (b) standard "rigorously." Commonwealth v. Wallace, 92 Mass. App. Ct. 7, 10 (2017). They "should only grant a postsentence motion to withdraw a plea if the defendant comes forward with a credible reason which outweighs the risk of prejudice to the Commonwealth." Id.

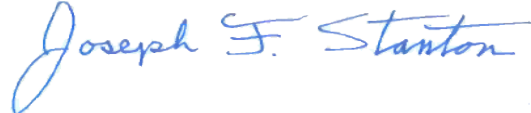
Here, the defendant's admissions that he drove a vehicle up to sixty miles per hour over the speed limit in commercial and residential areas, that he drove into oncoming traffic and over sidewalks, that he drove through an intersection "causing a

police cruiser and civilian vehicles to drive up on the sidewalk," and that he drove "broadside" into another police cruiser, all in an effort to evade the police, amply support an inference that the defendant had a "general intent to do the act causing injury." Commonwealth v. Appleby, 380 Mass. 296, 307 (1980). See Commonwealth v. Moran, 453 Mass. 880, 885 (2009), and cases cited (intent may be "inferred from the facts and circumstances presented"). The fact that the defendant drove away after colliding with the cruiser further supports an inference that he intentionally used the vehicle as a dangerous weapon. See Commonwealth v. Carrion, 407 Mass. 263, 277 (1990) ("Flight is perhaps the classic evidence of consciousness of guilt"). And although the prosecutor did not describe the officers' injuries in detail at the plea colloquy, we agree with the motion judge that the facts recited support an inference that the officers suffered "injur[ies] that interfered with [their] health or comfort." Commonwealth v. Burno, 396 Mass. 622, 627 (1986). The defendant waived his right to be convicted on proof beyond a reasonable doubt by pleading guilty, Commonwealth v. Armstrong, 88 Mass. App. Ct. 756, 758 (2015), and, in any event, he cites no evidence that the officers' injuries were merely "transient and trifling." Burno, supra. We also note that the defendant waited a significant period of time to challenge his pleas and does so in the sentencing

enhancement context. See Lopez, 426 Mass. at 663 (describing increasing collateral attacks on guilty pleas in context of sentencing enhancements, and stating, "dilatatoriness in not directly challenging [a] plea will often suggest that, when the plea was made, the defendant was satisfied with his arrangement; had been counselled as to its particulars; and could be lawfully deemed to have accepted what were the unforeseeable, but possible, consequences"). We see no abuse of discretion or error of law in the motion judge's decision.

Order entered August 6, 2018,
denying motion to withdraw
guilty pleas affirmed.

By the Court (Blake, Henry &
McDonough, JJ.¹),



Clerk

Entered: August 1, 2019.

¹ The panelists are listed in order of seniority.